

On March 17, 2009 appellant, then a 69-year-old high voltage electrician, filed a claim for compensation alleging that he developed hearing loss due to his federal employment. He became aware of his hearing loss and realized that it was causally related to his employment in February 10, 2005. Appellant did not stop work.

By letter dated April 10, 2009, the Office advised appellant of the type of evidence needed to establish his claim. It also requested that the employing establishment address the sources of his noise exposure, decibel and frequency level, period of exposure and hearing protection provided.

Appellant submitted a statement and noted that from August 1958 to March 1989 he worked for Copperweld Steel Company as a chipper grinder, final inspector and motor inspector (maintenance electrician) and was exposed to hazardous noise from chipping hammers, overhead cranes, sirens, steel bars, rolling of skids, electric air furnaces, transformers, motors, air compressors, for one to seven hours per day and was provided with hearing protection. He noted that, from May 1991 to April 1992, he worked for Edderer Cranes as an electrician and was exposed to hazardous noise from large fabricating machines and riveting machines for two to six hours per day. Appellant noted that, from April 1989 to June 1991, he worked as an electrician at the employing establishment and was exposed to hazardous noise from machine shop lathes, milling machines, forging hammers, electric arc furnaces, air compressors and various machines noises at pier side on ships, for two to six hours per day and was provided with hearing protection. He noted that since May 1992 he worked as a high voltage electrician and was exposed to hazardous noise from overhead cranes, sirens, air compressors, electric arc furnaces, forge hammers, generators and quitting time whistles for 15 minutes to 4 hours per day and was provided with hearing protection.

The Office received employing establishment medical records and audiograms from March 10, 1989 to January 29, 2009. In an employing establishment certificate of medical examination dated March 10, 1989, the examining physician's assistant noted counseling appellant on the employer's hearing conservation program and advised that he had prior civilian employment with the steel mill. On March 14, 1989 an employing establishment audiologist indicated that appellant's entry audiogram of March 10, 1989 revealed high-frequency hearing loss that might be noise related. Similarly, on February 28, 2005, an audiologist diagnosed mild to severe progressive sensorineural hearing loss and noted that he worked in the steel mills for 30 years before the employing establishment and reported being exposed to noise. The audiologist indicated that appellant's preemployment audiogram in 1989 revealed moderate to severe high-frequency sensorineural hearing loss. The employing establishment provided noise exposure data, dated on April 24, 2009, which noted that, for the period of April 1989 to March 1992, he had eight-hour time weighted average noise exposure which was greater than 84 decibels for at least 30 days per year. Also submitted were records from an employing establishment hearing loss surveillance program from January 14, 1994 to January 31, 2006.

By letter dated July 9, 2009, the Office referred appellant to Dr. Gregory K. Chan, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. It provided Dr. Chan with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

Dr. Chan performed an otologic evaluation of appellant on August 3, 2009 and audiometric testing was conducted on the physician's behalf on the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 25, 25, 55 and 80 decibels; left ear 25, 30, 50 and 65 decibels. In a report dated August 3, 2009, Dr. Chan diagnosed bilateral high-frequency sensorineural hearing loss and noted that it was more

probable than not that appellant did not have any hearing loss as a result of working at the employing establishment as an electrician. He noted that physical examination of the canals and eardrums revealed normal tympanic membranes bilaterally. Dr. Chan noted that, based on an audiogram done on March 10, 1989, the reference audiogram for the year appellant was hired, he already had high-frequency sensorineural hearing loss. He advised that appellant worked for nearly 20 years and the hearing loss had not significantly progressed. Dr. Chan opined that the worsening hearing levels since the 1989 audiogram could be attributed to age-related hearing loss on a more probable than not basis. Appellant reported using hearing protection when it was posted and feasible and should not have had any hearing loss as a result of noise exposure due to his employment at the employing establishment. Dr. Chan opined that appellant's industrial noise exposure at the employing establishment was not sufficient enough to cause his hearing loss compared to his baseline level of hearing in 1989; therefore, he did not have hearing loss as a result of his employment.

By a decision dated September 25, 2009, the Office denied appellant's claim on the grounds that the medical evidence did not support that his hearing loss was causally related to workplace noise exposure.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the

¹ Gary J. Watling, 52 ECAB 357 (2001).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²

ANALYSIS

In the instant case, it is not disputed that appellant was exposed to noise from 1989 to the present in the course of his federal employment. However, the medical evidence is insufficient to support that he has hearing loss causally related to his workplace noise exposure. Appellant did not submit any medical report from a physician addressing how specific work duties or noise exposure at work may have caused or aggravated his hearing loss. Submitted were employing establishment audiograms March 10, 1989 to January 29, 2009. Employing establishment records from March 10 and 14, 1989, indicated that appellant had high-frequency hearing loss when he began his federal employment. There are no employing establishment medical records from a physician supporting that he has a hearing loss attributable to his federal employment.

On July 9, 2009 the Office referred appellant to Dr. Chan. In report dated August 3, 2009, Dr. Chan determined that appellant's sensorineural hearing loss was not due to his employment. He diagnosed mild sensorineural hearing loss of the left ear at 3,000 hertz (Hz) and mild sensorineural hearing loss of the right ear at 3,000 Hz through 6,000 Hz. Dr. Chan diagnosed bilateral high-frequency sensorineural hearing loss and noted that more probable than not basis appellant did not have any hearing loss as a result of working at the employing establishment as an electrician. He based his opinion on an audiogram done on March 10, 1989, the reference audiogram for the year appellant was hired, which revealed that he already had high-frequency sensorineural hearing loss. Dr. Chan advised that appellant worked for nearly 20 years and the hearing loss had not significantly progressed. He opined that the worsening hearing levels since the 1989 audiogram were more probably than not attributed to his age-related hearing loss. Dr. Chan noted that appellant reported using hearing protection when it was available and should not have had any hearing loss as a result of noise exposure due to his employment at the employing establishment. He opined that appellant's industrial noise exposure at the employing establishment was not sufficient enough to cause his hearing loss compared to his baseline level of hearing in 1989. Based on this, Dr. Chan concluded that appellant did not have hearing loss as a result of his employment.

The Board finds that the medical evidence does not support that appellant has any hearing loss causally related to workplace noise exposure. Dr. Chan provided a thorough examination and a reasoned medical report explaining how the hearing loss was not due to the employment. The Board finds that his report represents the weight of the evidence. Appellant has not submitted any medical opinion supporting that any hearing loss is employment related. Thus, he did not meet his burden of proof to establish that his claimed hearing loss is causally related to employment factors.

On appeal, appellant asserts that his hearing loss increased since beginning work at the employing establishment. As noted above, he has not submitted any medical opinion supporting that any hearing loss is employment related and Dr. Chan's report indicated that the hearing loss

² *Solomon Polen*, 51 ECAB 341 (2000).

is not employment related. Neither the fact that a claimant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by the employment is sufficient to establish causal relationship.³

CONCLUSION

The Board finds that appellant has not established that his hearing loss was caused or aggravated by his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 25, 2009 is affirmed.

Issued: August 17, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

³ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007).